THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2285 of 2007

23.2.2007

Between:

N.Krishnaiah, S/o.late Chandraiah
And another

… Petitioners

AND

The Principal Secretary to Government of Andhra Pradesh,
Revenue Department, Secretariat, Hyderabad
And others

… Respondents

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ORDER:

Late N.Chandraiah, the father of the petitioners herein, was Excise contractor of the Government. Prior to 1974, respondents 3 and 4 initiated action under A.P. Revenue Recovery Act, 1864 (the Act, for brevity), for recovery of excise arrears of Rs.4,058.87ps. due from late Chandraiah. The property of late Chandraiah admeasuring Acs.8.34 guntas situated in survey Nos.104 and 159 of Machanpally village of Shabad Mandal in Ranga Reddy District, was brought to sale in a public auction, held by the Tahsildar of Chevella Taluk in Hyderabad District. Late N.Narayana, S/o.Sayanna (none other than the first cousin of the petitioners) purchased the property and paid the entire auction amount of Rs.2,500/-. The auction was confirmed and a sale certificate was issued by the Revenue Divisional Officer (RDO), Chevella Division, Hyderabad District, under Section 38 of the Act, vide proceedings No.J/3327/74, dated 17.2.1975. About twenty five (25) years thereafter, the petitioners herein filed a revision petition under Section 57-A of the Act before the second respondent against the issuance of the sale certificate in favour of N.Narayana. The second respondent, after considering the matter and perusing the records available, dismissed the revision petition observing that neither the petitioners nor their father exhausted the remedies provided under Section 37-A of the Act before confirmation of the sale by the RDO and that no cogent reasons put forth in the revision petition against the issuance of sale certificate issued by the RDO. The revision petition was dismissed on 29.9.2004. Aggrieved by the same, the writ petition is filed seeking invalidation of the said order.

Learned Counsel for the petitioners submits that the father of

respondents 7 to 11, late Narayana, played fraud in collusion with the officials of the Excise department in getting the sale certificate though late Chandraiah cleared all the excise arrears. He also points out that the then Tahsildar, Chevella Taluk, issued a certificate on 04.3.1980 to the effect that late Chandraiah cleared all his excise arrears in File No.C4/549/59. He submits that the order of the Commissioner was never intimated to the petitioners by their counsel, who was engaged to argue the case before the second respondent, and only two weeks prior to filing of the writ petition, the petitioners contacted the counsel to ascertain the stage of the appeal when they came to know about the impugned order. He also submits that the petitioners are still in possession of the property and revenue entries have not been changed.

Learned Assistant Government Pleader for Revenue (General-T) submits that there was a long delay on the part of the petitioners in preferring the revision petition before the second respondent and even though the second respondent passed orders on 29.9.2004, the writ petition was filed only in February 2007, without properly explaining long delay in filing the writ petition. He also points out that the certificate allegedly issued by the Tahsildar on 04.3.1980 was five years after the sale certificate was issued on 17.2.1975 in favour of late Narayana and, therefore, fraud as alleged cannot be inferred.

As rightly pointed out by the learned Assistant Government pleader, the basis for alleging fraud in late Narayana obtaining sale certificate is the certificate allegedly issued by the Tahsildar, Chevella Taluk, vide letter No.C4/549/59, dated 04.3.1980. Even it is attached with some value, it was issued five years after the sale certificate was issued on 17.2.1975 in favour of Narayana. Be that as it is, if the certificate evidencing the payment of excise arrears was available with the petitioners or their father, nothing prevented them to approach the second respondent by filing a revision petition. They did not do so. Admittedly revision petition was filed in 2001, which itself would improbablises the case of the petitioners. Secondly, though the revision was rejected more than two years ago, the writ petition was filed in February 2007, making unfounded allegations. The allegation that the counsel did not inform the petitioners the progress of the case is itself unbelievable, as to why the petitioners who claim to be the successors of the property admeasuring Acs.8.34 guntas, could keep quiet not being in touch with their counsel appearing before the second respondent. These allegations are invented for the purpose of this case. The writ petition is barred by long delay and laches and in such an event the jurisdiction of this Court cannot be invoked.

The writ petition is misconceived and is accordingly dismissed.

No costs.

February 23, 2007. (**V.V.S.RAO,J**)
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